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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/590,991	06/09/2000	John E. Adamou	469201-475	2154

7590 03/11/2003

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EXAMINER

DEVI, SARVAMANGALA J N

ART UNIT

PAPER NUMBER

1645

DATE MAILED: 03/11/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**Application No.  
**09/590,991**Applicant(s)  
**Adamou et al.**Examiner  
**S. Devi, Ph.D.**Art Unit  
**1645**

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Feb 28, 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on Feb 28, 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see NOTE below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Attachment.

3. ☐ Applicant's reply has overcome the following rejection(s):

4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because:

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None

Claim(s) objected to: None

Claim(s) rejected: 1, 4, 23, and 24

Claim(s) withdrawn from consideration: 5-15, 17-22 and 26-32

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

10. ☐ Other:

*S.D. Mar-03*  
**S. DEVI, PH.D.**  
**PRIMARY EXAMINER**  
**ART UNIT 1645**

Serial No: 09/590,991  
Art Unit: 1645

### ATTACHMENT TO ADVISORY ACTION

The addition of the new limitation to claim 1: "An immunogenic composition" along with the deletion of the recitation "protective", and the addition of the new limitation to claim 23: "binds to" antibodies that protect against infection by *Streptococcus pneumoniae* with the deletion of the recitation "elicits production", raise new issues under 35 U.S.C 112, first paragraph, with regard to the enablement of a polypeptide that is 95% identical to SEQ ID NO: 6 and yet being capable of producing antibodies with specificity to *Streptococcus pneumoniae*, or yet being capable of binding antibodies protective against *Streptococcus pneumoniae*.

*SD* Mar. 03  
S. DEVI, PH.D.  
PRIMARY EXAMINER